IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.41/2005

Ramkishan @ Kishan @ Gopal S/o Shri Chhogalal
Versus
The State of Rajasthan through the PP

Date of Judgment :::: 17th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Harendra Singh and
Shri Kartar Singh Faujdar, Counsel for accused-appellant
Shri B.N. Sandu, P.P., for the State

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By the Court:-

The matter has come-up for orders on the second application for suspension of sentence of the accused-appellant on the ground that the appellant has already remained in jail for about two-years and ten-months, but, during the course of arguments on the application for suspension of sentence, the learned counsel for the appellant contended that final arguments in the appeal itself may be heard and the same may be disposed of.

With the consent of the learned counsel for both the parties, the appeal itself has been heard and the same is being disposed of by this judgment.

The Additional Sessions Judge (Fast Track) No.1, Tonk, vide its judgment and order dated

17.12.2004, in Sessions Case No.56/2004, has convicted and sentenced the accused-appellant under Section 304 Part II of the Indian Penal Code, to undergo 7 years rigorous imprisonment and a fine of Rs.50,000/-; in default of payment of fine, to further undergo one year's additional rigorous imprisonment.

The learned counsel for the appellant argued the case on merits but, during the course of arguments, in view of the statement of eye-witness PW-3 Geeta W/o the deceased Radhakishan, he rightly did not challenge the order of conviction passed by the trial court against the appellant, and contended that the appellant has already remained in jail for about two years and ten months, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him.

The learned counsel for the respondent State has not seriously opposed the prayer of the learned counsel for the appellant for reduction of the sentence in view of the fact that the order of conviction has not been challenged in the case.

I have considered the submission of the learned counsel for both the parties.

The learned counsel for the appellant has not challenged the order of conviction in view of the statement of PW-3 Geeta, and rightly so, therefore, it

is not necessary to refer and discuss the facts of the case, in detail.

In this case the prosecution, in support of its case, examined two injured eye-witnesses, namely, PW-8 Madan and PW-12 Nuruddin, but both have been declared hostile. The conviction of th appellant is based on the statement of Geeta (PW-3) W/o the deceased Radhakishan. The allegation against the appellant is that he inflicted injuries by fist on the person of the deceased.

After considering the submission of the learned counsel for the appellant as well as other facts and circumstances of the present case I am not inclined to reduce the sentence of imprisonment of the appellant to the period of imprisonment already undergone by him, but I think it fit and proper that ends of justice will meet in case the sentence of imprisonment passed by the trial court is reduced to a period of four years and six months with fine of Rs.50,000/-; in default of payment of fine, to further undergo six months rigorous imprisonment. The trial court has already passed the order that in case the amount of fine is deposited then the same will be paid to Smt. Geeta W/o of the deceased Radhakishan.

Consequently, the appeal is partly allowed. The impugned judgment passed by the trial court is

modified. The conviction of the accused-appellant under Section 304 Part II of the Indian Penal Code, is maintained, but the sentence of imprisonment awarded by the trial court is reduced from 7 years rigorous imprisonment to a period of 4 years and 6 months rigorous imprisonment and a fine of Rs.50,000/-; in default of payment of fine, to further undergo six months additional rigorous imprisonment.

(Narendra Kumar Jain) J.

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